

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

<b>CLIFTON MONROE GRAVES, #289286,</b>	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>USDC 3:05-CV-0436-G</b>
	)	<b>USCA 06-10097</b>
<b>DOUGLAS DRETKE, Director Texas</b>	)	<b>ECF</b>
<b>Department of Criminal Justice,</b>	)	
<b>Correctional Institutions Division,</b>	)	
<b>Respondent.</b>	)	

**FINDINGS, CONCLUSIONS AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE**

Pursuant to the provisions of 28 U.S.C. § 636(b) and an order of the District Court filed on March 23, 2006, this action has been referred to the United States Magistrate Judge for recommendation. The findings, conclusions and recommendation of the Magistrate Judge are as follows:

**FINDINGS AND CONCLUSIONS:**

On March 7, 2006, the United States Court of Appeals for the Fifth Circuit remanded this case to determine whether Petitioner delivered his notice of appeal to prison officials for mailing on or before December 21, 2005.

In the advisory to the court, filed on April 18, 2006, Respondent submitted a copy of the Dalhart Unit's prison mail log for the period from December 19, 2005, until January 5, 2006. The mail log reflects that on December 22, 2005, Petitioner delivered legal mail addressed to this Court to the Dalhart Unit mailroom. This coincides with Petitioner's statement in his response filed in this Court on March 27, 2006. (Petitioner's Response at 2).<sup>1</sup>

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<sup>1</sup> Petitioner alleges that his December 22, 2006 mailing was twice returned to him for insufficient postage, on December 26 and 27, 2005, as reflected in the mail log. Since both returns

RECOMMENDATION:

For the foregoing reasons, it is recommended that Petitioner's notice of appeal was filed on December 22, 2005, one day after the December 21, 2005 deadline for filing a timely notice of appeal with the Fifth Circuit.

It is further recommended that Petitioner's motion to for reimbursement of "COA fees" filed on March 29, 2006, be denied as moot. (See February 23, 2006 Order granting Petitioner's motion for leave to proceed *in forma pauperis* on appeal).

This case should be returned to the Fifth Circuit for further proceedings.

Signed this 20th day of April , 2006.



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WM. F. SANDERSON, JR.  
UNITED STATES MAGISTRATE JUDGE

NOTICE

In the event that you wish to object to this recommendation, you are hereby notified that you must file your written objections within ten days after being served with a copy of this recommendation. Pursuant to Douglass v. United Servs. Auto Ass'n, 79 F.3d 1415 (5th Cir. 1996) (*en banc*), a party's failure to file written objections to these proposed findings of fact and conclusions of law within such ten-day period may bar a *de novo* determination by the district judge of any finding of fact or conclusion of law and shall bar such party, except upon grounds of plain error, from attacking on appeal the unobjected to proposed findings of fact and conclusions of law accepted by the district court.

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post-dated the initial mailing on December 22, 2006, they do not appear to affect the mailbox analysis in this case. See Houston v. Lack, 487 U.S. 266, 276, 108 S.Ct. 2379, 101 L.Ed.2d 245 (1988).

Petitioner also alleges that the December 21, 2006 deadline should be extended by one-day. Such a request should be addressed to the Fifth Circuit Court of Appeals not this Court.